



City of Tacoma  
Planning and Development Services

**Agenda Item  
D-2**

**To:** Planning Commission  
**From:** Lihuang Wung, Planning Services Division  
**Subject:** **Marijuana Use Buffers Code Amendment**  
**Meeting Date:** July 19, 2017  
**Memo Date:** July 13, 2017

At the last meeting on June 21, 2017, the Planning Commission reviewed the City Council's request (per Resolution No. 39742, adopted on June 6, 2017) for the Commission to consider interim regulations concerning marijuana use buffers. The Commission determined that, instead of following the interim regulations process, this important and relatively straightforward matter should and can be accomplished in a fairly streamlined and effective manner through the normal code amendment process, whereby the Commission would develop and forward the final draft code amendment, after conducting a public hearing, to the Council for consideration for adoption.

At the next meeting on July 19, the Commission will review the attached findings of fact and recommendations report, which documents the Commission's determination and includes the text of the proposed code amendment. The Commission will consider authorizing the distribution of the report for public review, and setting September 6, 2017 (tentatively) as the date for a public hearing to receive public comment on the proposal.

If you have any questions, please contact me at (253) 591-5682 or [lwung@cityoftacoma.org](mailto:lwung@cityoftacoma.org).

Attachment

c. Peter Huffman, Director





# Marijuana Use Buffers

## Proposed Amendment to the Tacoma Municipal Code

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### Planning Commission Findings of Fact and Recommendations Report July 19, 2017 Draft

#### A. Subject:

Proposed code amendment concerning marijuana use buffers.

#### B. Summary of the Proposal:

The proposal would amend the Tacoma Municipal Code ("TMC"), Section 13.06.565 Marijuana Uses, Subsection B.3, as follows (deletions shown in ~~red strikethroughs~~ and additions in blue underlines):

3. For purposes of this Section and the standards applicable to state-licensed marijuana uses, the terms and definitions provided in WAC 314-55 shall ~~generally~~ apply ~~unless the context clearly indicates otherwise~~ except for the following definitions:

(a) "Playground" means a public outdoor recreation area for children, usually equipped with swings, slides, and other playground equipment, owned and/or managed by a city, county, state, or federal government, or a metropolitan parks district.

(b) "Recreation center or facility" means a supervised center that provides a broad range of activities and events intended primarily for use by persons under twenty-one years of age, owned and/or managed by a charitable nonprofit organization, city, county, state, or federal government, or a metropolitan parks district.

By adding local definitions of "Playground" and "Recreation center or facility" to the City's zoning of marijuana uses and including "metropolitan parks district" in the ownership paradigm, the proposal would protect said facilities owned by Metro Parks Tacoma ("MPT") to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code ("WAC") 314-55-010(24)-(27).

The proposal was initiated by the City Council via Resolution No. 39742 (see Attachment "1"), adopted on June 6, 2017, whereby the Planning Commission was requested to consider recommending said code amendment to the City Council for adoption on an interim basis, i.e., as interim regulations, until such time as the state corrects its own definitions.

#### C. Findings of Fact:

##### 1. Legislative Background:

- a. State Initiative 502 ("I-502") was approved by Washington voters in November 2012, providing a framework for licensing and regulating the production, processing, and retail sale of recreational marijuana.
- b. The Cannabis Patient Protection Act ("CPPA") was enacted by the State Legislature in April 2015, establishing regulations for the formerly unregulated aspects of the marijuana system and aligning it with the recreational system.

- c. The Washington State Liquor and Cannabis Board (“LCB”) is the agency responsible for licensing and regulating marijuana. The LCB established the first set of marijuana related administrative procedures and standards in December 2013, began to issue marijuana licenses in March 2014, and has since been carrying out its rulemaking process on a periodic basis.
- d. In response to I-502, the CPPA, and applicable rules of the LCB, the City Council has taken the following legislative actions relating to marijuana uses:
  - Enacting interim regulations on November 5, 2013, effective for one year from November 17, 2013 to November 16, 2014, pending the results of the LCB’s first rulemaking (Substitute Ordinance No. 28182); and extending the interim regulations on September 30, 2014, for six months, through May 16, 2015 (Ordinance No. 28250);
  - Enacting permanent marijuana regulations on February 17, 2015, superseding the interim regulations (Amended Ordinance No. 28281);
  - Imposing a moratorium on permitting marijuana retail uses on January 12, 2016, for six months, through March 10, 2016, in response to the LCB’s expansion of the cap on retail marijuana stores in Tacoma (Substitute Ordinance No. 28343); and
  - Amending the Public Nuisances Code and the Land Use Regulatory Code concerning marijuana uses on May 24, 2016, and terminating the moratorium (Amended Ordinance No. 28361).

2. Initiation of the Proposed Code Amendment:

- a. The consideration for the proposed code amendment was initiated by the City Council on June 6, 2017, via Resolution No. 39742 (see Attachment “1”), which was prompted by an LCB-denied variance application for a marijuana production facility within 1,000 feet of an MPT-owned playground, as articulated in a memorandum from the City Attorney’s Office to the City Manager, dated May 1, 2017, that called out the issue and suggested the need for said code amendment (see Attachment “2”).
- b. The adoption of Resolution No. 39742 was also in response to the Council Consideration Request submitted by Deputy Mayor Robert Thoms on May 4, 2017, that urged the City Council “to amend the City of Tacoma’s marijuana regulation ordinance to include Metropolitan Park District parks, recreation centers, facilities, and playgrounds in the 1,000 foot buffer zone for marijuana uses” (see Attachment “3”).
- c. Resolution No. 39742 indicates that City staff has discovered a gap between the state’s intent to require greater setback buffers for public playgrounds and recreational centers and facilities and the state’s definitions for these sites. This gap arises from the state’s unintended omission of “metropolitan parks districts” from the ownership paradigm in the WAC definitions of “Playground” and “Recreation center or facility.” The City understands that the state intends to correct this omission in its definitions, but it may take some time to do so.
- d. Resolution No. 39742 suggests that the City can alleviate the problems that have arisen in permitting marijuana uses and prevent further conflicts from occurring, by adding these two definitions in the TMC on an interim basis, until such time as the state corrects its own definitions.
- e. Resolution No. 39742 also stipulates the text of the proposed code amendment, which is also mentioned above in the section of “Summary of the Proposal.” The text exemplifies the legislative intent of the City Council, does not deviate from the existing definitions of the WAC, and can be reasonably expected to be in compliance with the state’s definitions when corrected.

- f. Resolution No. 39742 does not declare an emergency for the matter, nor does it specify when the Planning Commission must provide its findings of fact and recommendations concerning the need for the interim regulations. Nevertheless, it is understood that the City Council intends to move forward with the proposed code amendment in a fairly swift manner.

### 3. Impacts of the Proposal:

- a. The proposed code amendment would not have any impact to existing marijuana businesses, including retailers, producers and processors. In staff's original analysis of the buffer zones as set forth in Amended Ordinance No. 28361 (adopted on May 24, 2016), playgrounds, for mapping purposes, were included and assumed to be in all parks, including those owned by MPT. As illustrated in an up-to-date map of the locations of current marijuana businesses (see Attachment "4"), all MPT-owned parks that contain playground equipment are already located within the mapped buffer zones. Adding definitions of "Playground" and "Recreation center or facility" to the code would not result in any additional facility being identified outside of existing buffered zones that could impact existing businesses; on the contrary, said code amendment should help ensure that all public playgrounds are buffered, as was intended.
- b. The proposed code amendment is not expected to have much, if any, impact to future marijuana businesses. As articulated in the memorandum from the City Attorney's Office (see Attachment "2"), it is highly unlikely that the LCB will grant licenses for prospective variance applications, if any, similar to the one that had prompted the consideration for the proposed code amendment, regardless of how the City handles those applications.

### 4. Interim Regulations Process vs. Code Amendment Process:

- a. The interim regulations process initiated by Resolution No. 39742 will be carried out through the following general steps, in accordance with TMC 13.02.055 and based on the situations associated with this particular issue :
  - The Planning Commission develops findings of fact and recommendations to help the City Council justify the imposition of the interim regulations. The Council subsequently enacts the interim regulations, with a public hearing.
  - The interim regulations can be effective for 6 months, or 12 months with a work plan for the development of permanent regulations. Since it is unknown when this matter will be included in the LCB's rulemaking schedule, it will be appropriate to set the interim regulations effective for 12 months.
  - Upon the expiration of the interim regulations, if the state has not corrected its definitions, the Council will need to extend the interim regulations for 6 months, with a public hearing. Further extensions of the interim regulations may be needed and shall be done in 6-month intervals, each with a public hearing held by the Council and supportive findings of fact.
  - Upon the state's correction of its definitions, the Commission will develop draft permanent regulations accordingly, conduct a public hearing, and make a recommendation to the Council. The Council will conduct a public hearing and adopt the permanent regulations, superseding the interim regulations.
- b. Alternatively, the proposal could be handled through the normal code amendment process in accordance with TMC 13.02.045, whereby the Planning Commission develops draft permanent regulations, conducts a public hearing, and makes a recommendation to the City Council, and the Council conducts a public hearing and adopts the permanent regulations. This process will

be repeated when the state's definitions are corrected, and if it is determined that the permanent regulations need to be amended accordingly.

- c. The normal code amendment process is more streamlined than the interim regulations process, but will achieve the same effects, primarily due to the fact that the proposed code amendment is relatively straightforward, uncontroversial, and of no impact to existing or future marijuana businesses. It is also a process less dependent on the uncertain rulemaking schedule of the LCB.
- d. Concerning the project timeline, the imposition of the interim regulations can be expected to occur in September 2017, while the code amendment process may not be completed until October 2017. However, more time will be needed for following up on the interim regulations process, i.e., developing permanent regulations or extending the interim regulations, depending on the progress of the state. The code amendment process, on the other hand, needs to be revisited only if necessary, which can be accomplished within a relatively short time frame.

#### **D. Conclusions and Recommendations:**

The City Council adopted Resolution No. 39742 on June 9, 2017 (see Attachment "1"), requesting the Planning Commission to consider adding local definitions of "Playground" and "Recreation center or facility" to the City's zoning of marijuana uses and including "metropolitan parks district" in the ownership paradigm, in order to protect said facilities owned by Metro Parks Tacoma to the level of buffering intended by the state, but currently not covered by state definitions found at Washington Administrative Code. By adopting the resolution, the City Council has initiated an interim regulations process, whereby the Planning Commission is requested to consider recommending said code amendment to the City Council for adoption on an interim basis, until such time as the state modifies its definitions.

The Planning Commission concurs with the City Council concerning the need for the proposed code amendment, but believes that this important and relatively straightforward matter should and can be accomplished in a more streamlined manner through the normal code amendment process, whereby the Planning Commission would develop the final draft code amendment, conduct a public hearing, and forward it to the City Council for consideration for adoption.

With this approach being recommended, the Planning Commission will proceed with scheduling a public hearing, tentatively for September 2017, to receive public comment on the proposed code amendment as depicted in "Section B. Summary of the Proposal," and subsequently formulate a recommendation to the City Council for its consideration.

#### **E. Attachments:**

*(Staff Note: The following materials had previously been provided to the Planning Commission at the meeting on June 21, 2017 and are not included here in this July 19<sup>th</sup> draft of the report, but will be included in the final version of the report if and when approved by the Commission for distribution for public review.)*

1. Resolution No. 39742 Initiating the Consideration for Interim Regulations (June 6, 2017)
2. Memorandum from the City Attorney's Office to the City Manager (May 1, 2017)
3. Council Consideration Request from Deputy Mayor Robert Thoms (May 4, 2017)
4. Location Map of Current Marijuana Businesses (May 24, 2017)